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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Landry Tinnel Perkins,

No. CV-19-05199-PHX-DWL

Petitioner,

ORDER

V.

Charles L Ryan, et al.,

Respondents.

On September 18, 2019, Petitioner initiated this action by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2254 (“the Petition”). (Doc. 1.) On August 19, 2020, Magistrate Judge Morrissey issued a Report and Recommendation (“R&R”) concluding the Petition should be denied and dismissed with prejudice. (Doc. 13.) Afterward, Petitioner filed objections to the R&R (Doc. 18) and Respondents filed a response (Doc. 21). For the following reasons, the Court will overrule Petitioner’s objections, adopt the R&R, and terminate this action.

I. Background

The Underlying Crime. In October 2014, police officers went to an apartment complex in response to reports of a fight in the parking lot. (Doc. 13 at 2.) When they arrived, a neighbor reported that the participants had entered one of the apartments. (*Id.*) When the officers knocked on the apartment’s door and announced their presence, two individuals answered the door “and provided ambiguous responses to questions regarding the parking lot and whether anyone else was in the apartment.” (*Id.*) After further

1 discussion, Petitioner emerged from a back room, was asked to step outside, and complied.
 2 (*Id.*) Upon running a check, the officers learned that Petitioner had an outstanding warrant
 3 for his arrest. (*Id.*) A search incident to arrest resulted in the discovery of a plastic bottle
 4 in Petitioner's pocket containing marijuana and methamphetamine. (*Id.*)

5 *Trial And Sentencing.* Petitioner was charged with possession of dangerous drugs
 6 and possession of marijuana. (*Id.*) Before trial, Petitioner moved to suppress the evidence
 7 obtained during the search incident to arrest. (*Id.*) Following a two-day hearing, the trial
 8 court denied the suppression motion. (*Id.*)

9 After a three-day trial, Petitioner was convicted of both counts. (*Id.*) Petitioner's
 10 counsel then filed a post-trial motion for a competency evaluation. (*Id.*) The trial court
 11 granted the request, held a competency hearing, and determined that Petitioner was
 12 competent. (*Id.*)

13 At sentencing, Petitioner was sentenced to concurrent terms totaling seven years.
 14 (*Id.*)

15 *The Direct Appeal.* Petitioner timely appealed his convictions and sentences. (*Id.*
 16 at 3.) After his appointed counsel filed an *Anders* brief, Petitioner filed a *pro per*
 17 supplemental brief that raised three issues: (1) a Fourth Amendment claim related to the
 18 search; (2) issues with witness credibility; and (3) ineffective assistance of trial counsel
 19 ("IAC"). (*Id.*)

20 In March 2018, the Arizona Court of Appeals issued a memorandum decision
 21 affirming Petitioner's convictions and sentences. (*Id.*)

22 *The PCR Proceeding.* In April 2018, Petitioner filed a timely notice of request for
 23 PCR relief. (*Id.*)

24 In June 2018, Petitioner's court-appointed PCR counsel filed a notice stating that
 25 counsel was unable to identify any colorable claims for relief. (*Id.*)

26 In July 2018, Petitioner filed a motion for new counsel and a *pro se* notice of request
 27 for PCR relief. (*Id.* at 4.) Both were later denied. (*Id.*)

28 In August 2018, Petitioner filed a *pro se* PCR petition. (*Id.*) It did not raise any

1 IAC claims—instead, the only two claims were (1) a Fourth Amendment claim and (2) a
 2 challenge to the credibility of one of the officers. (*Id.*)

3 In January 2019, the trial court denied PCR relief. (*Id.*)

4 Notably, Petitioner did not seek further review in the Arizona Court of Appeals.
 5 (*Id.*) Instead, in February 2019, Petitioner filed a petition for review in the Arizona
 6 Supreme Court. (*Id.*) This petition was dismissed four days later. (*Id.*)

7 *The State Habeas Proceeding.* In March 2019, Petitioner filed a petition for a writ
 8 of habeas corpus in the Arizona Supreme Court. (*Id.*)

9 In June 2019, the Arizona Supreme Court dismissed this petition. (*Id.* at 5.)

10 *The Habeas Claims.* In September 2019, Petitioner filed his federal habeas petition.
 11 It asserts three grounds for relief: “[I]n Ground One, Petitioner claims his Fourth and
 12 Fourteenth Amendment rights were violated by false witness statements, a warrantless
 13 ‘protective sweep,’ and the denial of a full and fair suppression hearing; in Ground Two,
 14 Petitioner alleges ineffective assistance of trial counsel; in Ground Three, Petitioner alleges
 15 ineffective assistance of appellate counsel.” (*Id.*)

16 *The R&R.* The R&R concludes that Petitioner is not entitled to relief. As for
 17 Petitioner’s first ground (Fourth Amendment), the R&R concludes it fails because
 18 Petitioner had a full and fair opportunity to litigate his Fourth Amendment claims in state
 19 court, including a two-day suppression hearing (during which Petitioner was allowed to
 20 testify and cross-examine witnesses) and further litigation of the claim during Petitioner’s
 21 direct appeal. (*Id.* at 7-10.) As for Petitioner’s second and third grounds (IAC of trial and
 22 appellate counsel), the R&R concludes these claims are procedurally defaulted because he
 23 did not raise them during his initial PCR proceeding and did not seek review of the denial
 24 of PCR relief in the Arizona Court of Appeals. (*Id.* at 10-13.)

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1 II. Legal Standard

2 A party may file written objections to an R&R within fourteen days of being served
 3 with a copy of it. Rules Governing Section 2254 Cases 8(b) (“Section 2254 Rules”). Those
 4 objections must be “specific.” *See Fed. R. Civ. P. 72(b)(2)* (“Within 14 days after being
 5 served with a copy of the recommended disposition, a party may serve and file specific
 6 written objections to the proposed findings and recommendations.”).

7 District courts are not required to review any portion of an R&R to which no specific
 8 objection has been made. *See, e.g., Thomas v. Arn*, 474 U.S. 140, 149-50 (1985) (“It does
 9 not appear that Congress intended to require district court review of a magistrate’s factual
 10 or legal conclusions, under a *de novo* or any other standard, when neither party objects to
 11 those findings.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)
 12 (“[T]he district judge must review the magistrate judge’s findings and recommendations
 13 *de novo* if objection is made, but not otherwise.”). Thus, district judges need not review
 14 an objection to an R&R that is general and non-specific. *See, e.g., Warling v. Ryan*, 2013
 15 WL 5276367, *2 (D. Ariz. 2013) (“Because *de novo* review of an entire R & R would
 16 defeat the efficiencies intended by Congress, a general objection ‘has the same effect as
 17 would a failure to object.’”) (citations omitted); *Haley v. Stewart*, 2006 WL 1980649, *2
 18 (D. Ariz. 2006) (“[G]eneral objections to an R & R are tantamount to no objection at all.”).¹

19 III. Analysis

20 In his objections to the R&R, Petitioner only addresses his second ground for relief
 21 (IAC of trial counsel). (Doc. 18.) Specifically, Petitioner challenges the R&R’s finding
 22 of procedural default as to that claim, arguing it is not procedurally defaulted because (1)
 23 the “Court of Appeals . . . proceeded to address the claim on its merits,” or alternatively
 24 (2) he can establish cause and prejudice to overcome any procedural default under
 25 “*Martinez/Trevino*” because he was abandoned by his appointed counsel in the PCR

26 ¹ *See generally* S. Gensler, 2 Federal Rules of Civil Procedure, Rules and
 27 Commentary, Rule 72, at 422 (2018) (“A party who wishes to object to a magistrate judge’s
 28 ruling must make specific and direct objections. General objections that do not direct the
 district court to the issues in controversy are not sufficient. . . . [T]he objecting party must
 specifically identify each issue for which he seeks district court review . . . ”).

1 proceeding and the IAC claim itself is strong. (*Id.*)

2 Petitioner's objections lack merit. First, the Arizona Court of Appeals did not
 3 address the merits of Petitioner's IAC claim. Petitioner is referring to his direct appeal,
 4 which is the only time he litigated in the Court of Appeals. During that proceeding, the
 5 court specifically held that it wasn't reaching the merits of the IAC claim. *State v. Perkins*,
 6 2018 WL 1477506, *2 (Ariz. Ct. App. 2018) (holding, under the heading "Ineffective
 7 Assistance of Counsel Claims Are Not Addressed on Direct Appeal," that "[w]e do not
 8 address ineffective assistance of counsel claims on direct appeal"). Nor does paragraph 12
 9 of the appellate decision constitute an attempt to reach the merits of the IAC claim—as
 10 Respondents correctly note (Doc. 21 at 4), paragraph 12 is best understood as the Court of
 11 Appeals' conclusion that it hadn't identified any arguable, unbriefed issues during his own
 12 independent search of the record. Accordingly, because Petitioner didn't properly raise an
 13 IAC claim during the subsequent PCR proceeding, the claim is procedurally defaulted.

14 Second, Petitioner's attempts to show cause and prejudice to excuse the procedural
 15 default under "*Martinez/Trevino*" are not properly before the Court because Petitioner
 16 didn't raise those arguments during the proceedings before the magistrate judge. (Doc. 12
 17 at 13-14 [raising different arguments.]) A party may not, in its objections to an R&R, raise
 18 new issues and arguments that weren't presented to the magistrate judge in the first
 19 instance. In any event, the Court further agrees, for the reasons stated in Respondents'
 20 response (Doc. 21 at 4-12), that Petitioner's arguments would fail even if they weren't
 21 forfeited.

22 Accordingly, **IT IS ORDERED** that:

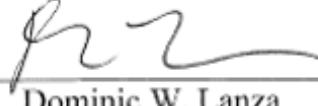
- 23 (1) Petitioner's objections to the R&R (Doc. 18) are **overruled**.
- 24 (2) The R&R's recommended disposition (Doc. 13) is **accepted**.
- 25 (3) The Petition (Doc. 1) is **denied and dismissed with prejudice**.
- 26 (4) A Certificate of Appealability and leave to proceed *in forma pauperis* on
 27 appeal are **denied** because Petitioner has not made a substantial showing of the denial of a
 28 constitutional right and because dismissal is justified by a plain procedural bar and

1 reasonable jurists would not find the procedural ruling debatable.

2 (5) The Clerk shall enter judgment accordingly and terminate this action.

3 Dated this 25th day of January, 2021.

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Dominic W. Lanza
United States District Judge